

Message Text

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ACTION L-03

INFO OCT-01 IO-13 ISO-00 AF-08 ARA-10 EA-09 EUR-12 NEA-10
PA-02 PRS-01 USIA-15 CIAE-00 INR-07 NSAE-00 EB-07
COME-00 /098 W
-----130238Z 024406 /63
R 130029Z JAN 77
FM USMISSION USUN NY
SECSTATE WASHDC 2024

UNCLAS USUN 0080

E.O. 11652: N/A
TAGS: PORG, UNCITRAL
SUBJ: UNCITRAL WORKING GROUP MEETING ON FORMATION OF
CONTRACTS

1. SUMMARY: IN FRENZY OF ACTIVITY, WG HAS COMPLETED
CONSIDERATION OF ARTICLES 3, 5, 7-13. DRAFTING GROUP
RESOLUTIONS OF ARTICLES 3A, 4 AND 6, AND DRAFT OF A NEW
ARTICLE ON INTERPRETATION REMAIN TO BE DISCUSSED.
ARTICLES 1 AND 2 WILL BE DISCUSSED IN LIGHT OF FINAL TEXTS
OF ARTICLES 3-13.

2. ARTICLES 5 (COMMUNICATION OF OFFER): PARA 1
(WHEN OFFER BECOMES EFFECTIVE) AND NEW PARAS 2
(WHEN OFFER REVOCABLE) AND 3 (WHEN IRREVOCABLE) ADOPTED
(IN OLD PARA 2 A, US PREFERS "IRREVOCABILITY" TO
"ACCEPTANCE"; SOME OPPOSITION TO SHIPMENT OR PAYMENT,
AS ACCEPTANCE, WITHOUT NOTIFICATION) WITH LITTLE
SUBSTANTIVE BUT CONSIDERABLE DRAFTING CHANGES AND SEVERAL
PHRASES BRACKETED FOR DECISION BY DIPLOMATIC CONFERENCE.
OLD PARA 3 TO BE CONSIDERED WITH GENERAL ARTICLE ON INTER-
PRETATION.

3. ARTICLE 6 (ACCEPTANCE OF OFFER): AFTER
EXTENSIVE DISCUSSION, PARAS 1-3 WERE GIVEN TO
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DRAFTING GROUP, WHICH INCORPORATED ESSENCE IN MAJOR
REWORKING OF ART 8 (SEE 5 BELOW). PARA 4 (A) BECAME
NEW PARA 2 A DRAFTED BY FINLAND WITH US AMENDMENTS,
AND READS "A CONTRACT OF SALE IS CONCLUDED AT THE
MOMENT THAT THE ACCEPTANCE OF AN OFFER BECOMES
EFFECTIVE IN ACCORDANCE WITH THE PROVISIONS OF THIS
CONVENTION". PARA 4 (B) DELETED.

4. ARTICLE 7 (ACCEPTANCE WITH MODIFICATIONS):
NEW PARA 1 ADOPTED, PARAS 2 A AND 3 BRACKETED FOR
DECISION BY DIPLOMATIC CONFERENCE, PARA 2 B DELETED.

5. ARTICLE 8 (WHEN ACCEPTANCE MUST ARRIVE): NEW PARA 2
ADOPTED WITHOUT CHANGE. NEW PARA 3, AS REDRAFTED BY
US AND CZECHOSLOVAKIA, HAS NOT YET BEEN ADOPTED.
FORMER PARA 1 NOW INCORPORATES ELEMENTS OF ARTICLE 6,
AND CONSISTS OF PARA 1 (GENERAL DEFINITION OF ACCEPTANCE),
1 BIS (WHEN ACCEPTANCE BECOMES EFFECTIVE) (SILENCE AS
ACCEPTANCE NOT MENTIONED BUT WIDELY DISAPPROVED IN THEORY
IF NOT PRACTICE), AND 1 TER TO MAKE ACCEPTANCE EFFECTIVE
(MUST PROMPTLY NOTIFY OFFEROR OF OFFER MADE IRREVOCABLE
BY SHIPMENT OR PAYMENT).

6. ARTICLE 9 (LATE ACCEPTANCE) OLD PARA 1 (OFFEROR
MAY TREAT AS ARRIVING ON TIME IF SO NOTIFIES
OFFEROR) ADOPTED. OLD PARA 2 (DELAY IN TRANSMISSION
BENEFITS OFFEREE) BRACKETED FOR DIPLOMATIC CONFERENCE.

7. ARTICLE 10 (REVOCATION OF ACCEPTANCE): OLD ARTICLE 10
ADOPTED WITH ADDITION OF FINAL WORDS "BECOMES EFFECTIVE".

8. ARTICLE 11 (INCAPACITY): BANKRUPTCY CONSIDERED TOO
DANGEROUS AN AREA TO FOOL WITH. OLD ART 11 ADOPTED
WITH ADDITION OF WORDS "PHYSICALLY OR MENTALLY"
BEFORE "INCAPABLE", "THE ACCEPTANCE BECOMES EFFECTIVE"
BEFORE "UNLESS".
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9. ARTICLE 11 A (ASSIGNMENT OF OFFERS): REJECTED
AFTER FIVE MINUTES' DISCUSSION.

10. ARTICLE 12 (DEFINITION OF "COMMUNICATION"):
NEW TEXT ADOPTED WITH SEVERAL CHANGES, NOW READING"...OR
ANY OTHER INDICATION IS 'COMMUNICATED' WHEN IT IS MADE
ORALLY TO THE ADDRESSEE OR DELIVERED BY ANY OTHER MEANS
TO HIM, TO HIS PLACE OF BUSINESS..."SEVERAL
DELEGATES EXPECTED NEW INVENTIONS TO MAKE SPECIFICATION
OF PERMISSIBLE MEANS INAPPROPRIATE.

11. ARTICLE 13 (DEFINITION OF "USAGE"): ADOPTED NEW TEXT.

12. COMMENT: WHILE US DEL HAS FEW PROBLEMS WITH
SECRETARIAT DRAFT, IT IS WIDELY CONSIDERED AT WORST
TOO COMMON-LAW AND VAGUE, AND AT BEST OVER -AMBITIOUS
AND INTELLECTUALLY IMPRESSIVE BUT DANGEROUS. SECOND
READING WILL BEGIN WED AFTERNOON, WITH ALL OR

PART OF THURS FREE FOR SECRETARIAT TO PREPARE TEXT
FOR FRIDAYS REPORT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: MEETING AGENDA, PLANNING MEETINGS
Control Number: n/a
Copy: SINGLE
Sent Date: 13-Jan-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977USUNN00080
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770012-0978
Format: TEL
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770153/aaaabumz.tel
Line Count: 120
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 340005da-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 20-Sep-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3602173
Secure: OPEN
Status: NATIVE
Subject: UNCITRAL WORKING GROUP MEETING ON FORMATION OF CONTRACTS
TAGS: PORG, UNCITRAL
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/340005da-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009